IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.738 OF 2004
IN
ARBITRATION PETITION NO.112 OF 2004

HCG Stock & Share Brokers Ltd. .. Appellant.
V/s.
Gaggar Suresh .. Respondent.

Mr.Rohit Kapadia i/b. P.G. Pravin for the appellant.

Mr.Z.T. Andhyarujina i/b. P. Krishnamurthy for the respondent.

CORAM : R.M. LODHA, &
J.P. DEVADHAR, JJ.

DATED : 2ND DECEMBER, 2004.

P.C. :

Heard Mr.Rohit Kapadia, the learned senior counsel for the appellant and Mr.Z.T. Andhyarujina, the learned counsel for the respondent.

2. The claim made by the present appellant before the Arbitral Tribunal was contested by the present respondent on the ground of limitation. The Arbitral Tribunal framed a preliminary issue of limitation and held that the claim was barred by time and, accordingly, rejected the appellant's claim. The learned single judge refused to interfere with the award passed by the Arbitral Tribunal giving rise to the present appeal.

3. The appellant in para 4,6 and 8 of the statement of claim averred thus :

> "4. In the ordinary and regular course of the business the Applicant maintained an account of the Respondent in its books of accounts and from time to time the Applicant forwarded to the Respondent the extracts of the said account, which was received, retained and accepted by the Respondent, and at no point of time did the Respondent raise any querry or dispute regarding the said extract of the account. At the foot of the said account of the Respondent so maintained by the Applicant a sum of Rs.49,79,388.17 remained due and payable by the Respondent to the Applicant as on 31st December, 1999. Hereto annexed and marked EXHIBIT "D" is a copy of the statement of account of the Respondent in the books of the Applicant upto 31st December, 1999. From time to time, the Applicant had also sent the confirmation letters to the Respondent along with the copy of statement of account, however, the Respondent neither raised any querry, nor did the Respondent ever raise any objection, on the contrary the Respondent kept on promising to pay the outstanding dues in his accounts, however, the Respondent sought time for making payment as the Respondent was facing financial difficulties.
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> 6. Though the Respondent never disputed his liability and always sought time to clear his dues, however, the Applicant got suspicious about intentions of the Respondent as the Respondent later on started giving evasive replies, as such the Applicant lodged a complaint against the Respondent with the Economic Offences Wing on 21st March, 2003. Hereto annexed and marked EXHIBIT "e" is a copy of the said complaint lodged by the Applicant against the Respondent.
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> 8. The Applicant says and submits that the disputes deemed to have arisen between the parties when the Applicant

filed the complaint against the Respondent with the Economic Offences Wing , i.e. on or about 21st March, 2003 as such the present claim filed by the Applicant is filed well within time and not barred by the law of limitation."

4. The respondent in reply thereto made the following averments :

"2. The Applicant claims that a dispute appears to have ensued with the Respondent pursuant to certain complaint filed by the Applicant with the Economic Offences Wing on or about 21st March 2003. It is submitted at the outset that the copy of the complaint annexed with the Arbitration Application does not seem to indicate any dispute of the Applicant with the Respondent. Clearly it is, but a letter addressed by the Respondent to the Economic Offences Wing and does not indicate any privities with the Respondent. Clearly also any such one-sided complaint cannot be taken to be evidence of any dispute amongst parties. It is submitted that for a dispute to exist the complicity of both parties is necessary and the complaint clearly does not include the Respondent and could very well be a move of the Applicant to drag on otherwise dead matter into the ambit of arbitration, in gross misuse of the provisions relating to arbitration. It is requested that the conduct of the Applicant be viewed strictly in this regard. I further request that the Applicant be put to strict proof as to the existence of a dispute that can come within the ambit of any arbitration proceedings.

4. Further even if it is assumed for the purpose of argument but not conceded that the arbitration proceeding is legal and the contract complete (sans consensus ad idem) it is clear that the Applicant has not filed the Arbitration Application

within the time prescribed by the National Stock Exchange of India Ltd. (NSE) and in accordance with the Regulations in this regard. As per the relevant provision in this regard, the time prescribed for filing any complaint arising out of a dispute where redressal may be sought from a panel of arbitrators appointed by the NSE, is 6 months from the date of dispute. This time starts running from the date on which the dispute has arisen. The last date on which the Applicant has carried out a transaction on behalf of the Respondent is on July 1, 1999 (as can be noted from Exhibit A attached along with his Complaint). The Respondent fails to comprehend how such an event, that occurred such a long time ago, can even be admitted for arbitration. It is submitted that the arbitration proceedings must be terminated per se since a prima facie dispute is not established, as it is severely time barred.

5. The Respondent disputes the contention of the Applicant that a complaint filed with the Economics Offences Wing enables it to claim that the current matter before The Learned Arbitrators is within the period of limitation. The Respondent submits that the present claim under which the Applicant is seeking redressal, is before the NSE and such an arbitrary and disconnected complaint before the Commissioner of Police is not to be considered when deciding the period of limitation. In any event, it is also submitted that the purported complaint before the Economic Offences Wing is but an after thought by the Applicant only for the purposes of filing the present claim for Arbitration. This is further borne out by the fact that despite filing the complaint in March, 2003, it has taken the Applicant until September 2003 to file the arbitration application. Further the time lag between the last date of the purported transactions (1/07//1999) and the date of the complaint is also well over three years."

5. The relevant clause providing for limitation for reference of claims, differences or disputes for arbitration in the bye-laws of the National Stock Exchange of India Limited reads thus :

> ". All claims, differences or disputes referred to in Bye laws (1), (1A), (1B) and (1D) above shall be submitted to arbitration within six months from the date on which the claim, difference or dispute arose or shall be deemed to have arisen. The time taken in conciliation proceedings, if any,initiated and conducted as per the provisions of the Act and the time taken by the Relevant Authority to administratively resolve the claim, differences or disputes shall be excluded for the purpose of determining the period of six months."

6. The dispute between the parties is deemed to have arisen, according to the appellant, when the complaint was filed by the appellant against the respondent with the Economic Offences Wing on or about March 21, 2003. However, this does not seem to be so. The disputes between the parties arose or deemed to have arisen much earlier. On February 8, 2001 the present appellant called upon the respondent to clear the outstanding on or before February 16, 2001. The letter reads thus :

"HCG STOCK & SHARE BROKERS LTD
MEMBERS OF NATIONAL STOCK EXCHANGE
45/47, BOMBAY SAMACHAR MARG,
MUMBAI - 400 023.
TEL.NO.:2662790/2661331, FAX:2662327
EMAIL:bhiday@bom2.vsnl.net.in

REF:HCG/408/2001.
Date:08/02/2001

To,
Mr.Gaggar Suresh,
302, Gaurav Apartments,
Film City Road,
Mumbai-400 063.

Dear Madam,

Sub : Client Code:408
Re. : Dues/debit balance as per statement of accounts.

We wish to inform you that as per the statement of accounts, there is an outstanding amount of Rs.49,79,388=17 payable by you to us towards the trades/transactions that were executed by you through our terminal.

The above dues are pending for last one month and you have been already advised by our official from time to time to clear the outstanding dues at the earliest. We once again give an opportunity to you to clear the outstanding debit balance as per the statement of account (once again furnishing the statement of account with dues as on date for your ready reference) on or before 15th Feb. 2001."

7. By another letter dated February 24, 2001 the present appellant called upon the respondent to clear the outstanding on or before March 19, 2001 failing which the appellant informed the respondent that they would proceed to sell the shares placed with them as collateral in the market and the proceeds thereof shall be adjusted against the outstanding without any further intimation. No doubt is left on the face of the aforesaid communications sent by the appellant to the respondent that the

dispute arose or is deemed to have arisen on March 19, 2001. The limitation provided under the bye-laws as quoted above is six months from the date on which the claims, differences or disputes arise or is deemed to have arisen. In the facts and circumstances of the case it cannot be held that the dispute arose or is deemed to have arisen between the parties on the complaint being made by the appellant against the respondent with Economic Offences Wing on or about March 21, 2003. The claim made by the appellant against the respondent in the month of September, 2003 is apparently time barred and no legal infirmity is found in the conclusion arrived at by the Arbitral Tribunal. The learned single Judge cannot be said to have erred in declining to interfere with the award passed by the Arbitral Tribunal.

8. The appeal is dismissed in limine.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)